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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,698

02/03/2005

Yasuyoshi Ueda

5404/81

2912

7590

08/13/2008

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EXAMINER

SINGH, SATYENDRA K

ART UNIT

PAPER NUMBER

1657

MAIL DATE

DELIVERY MODE

08/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/501,698	Applicant(s) UEDA ET AL.	
	Examiner SATYENDRA K. SINGH	Art Unit 1657	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 29, 31, 33, 34, 36, 39-41, 46, 49, 51, 61-77.
 Claim(s) withdrawn from consideration: 1, 2, 4, 8, 12, 13, 15, 17, 20 and 28.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Irene Marx/
 Primary Examiner, Art Unit 1651

Continuation of 3. The proposed amendment raises new issues that would require further consideration and/or search with respect to the addition of functional limitations to claim 29, including issues under 35 USC 112.

Claim 62 has been amended to recite limitation of various types of "modified fat and oil", which raises new issues under 112, second paragraph, and would require further search and consideration. Additionally, amendment to claim 63 "wherein a weight ratio of the fat or oil to a total weight of fat or oil and polyol is not lower than 1/10 when the fat and oil and the polyol exist together" raises new issues under 35 USC 112, first paragraph that would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: applicant's arguments are directed to amended claims that are not currently entered.

However, for the record, applicant's argument regarding 103(a) rejection (see remarks, page 10, 1st paragraph, in particular) is fully considered but is not found to be persuasive because claim 29 does not require the limitations of surfactants and ascorbic acid as currently argued. The argument that Motoyama et al does not teach reduced coenzyme Q10 formulation (see remarks, page 10, last paragraph, in particular) is not found to be persuasive because Motoyama et al was relied upon as a secondary reference that discloses the concept of using or incorporating polyglycerol fatty acid esters along with drug formulations (including coenzyme Q10) that are very slightly soluble in water and require said polyglycerol fatty acid esters in order to provide better dispersibility and thus bioavailability (see Motoyama et al, column 5, 2nd paragraph, in particular). The argument that Motoyama et al "neither discloses nor suggest the effect of the present invention" (see page 11, 1st paragraph, in particular) is not found to be persuasive because all the components as recited in the claimed composition (i.e. the product as claimed) are explicitly taught and/or made obvious by Chopra when taken in combination with Motoyama et al, and therefore, in the absence of any evidence to contrary, the composition as claimed remains rejected over the cited prior art references of record under 35 USC 103(a).

/Satyendra K. Singh/
Patent Examiner, AU 1657